NAYS—40

Allott	Dworshak	McClellan
Anderson	Eastland	Martin
Bartlett	Ervin	Mundt
Beall	Fong	Robertson
Bible	Frear	Russell
Bridges	Gruening	Schoeppel
Butler	Hickenlooper	Smith
Byrd, Va.	Holland	Stennis
Byrd, W. Va.	Hruska	Talmadge
Cannon	Johnston, S.C.	Thurmond
Cotton	Jordan	Williams, Del.
Curtis	Kerr	Young, Ohio
Dirksen	Langer	
Dodd	Lausche	

NOT VOTING—11

Clark	Hennings	O'Mahoney
Goldwater	Kefauver	Symington
Hart	Kennedy	Young, N. Dak.
Hartke	Murray	

So the bill (S. 1697) was passed as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102 of title I of the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611a) is amended to read as follows:

"SEC. 102. Responsibility for giving effect to the purposes of this Act shall be vested in the Secretary of State or such other officer as the President may designate, hereinafter referred to as the 'Administrator'."

SEC. 2. Section 303 of title II of the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1613b) is amended to read as follows:

"SEC. 303. (a) This Act shall not be deemed to prohibit furnishing economic and financial assistance to any nation or area, except the Union of Soviet Socialist Republics and Communist-held areas of the Far East, whenever the President determines that such assistance is important to the security of the United States: *Provided,* That, after termination of assistance to any nation as provided in sections 103(b) and 203 of this Act, assistance shall be resumed to such nation only in accordance with section 104 of this Act. The President shall immediately report any determination made pursuant to this subsection with reasons therefor to the Committees on Foreign Relations, Appropriations, and Armed Services of the Senate and the Speaker of the House of Representatives.

"(b) The Administrator may, notwithstanding the requirements of the first proviso of section 103(b) of this Act, direct the continuance of assistance to a country which knowingly permits shipments of items other than arms, ammunition, implements of war, and atomic energy materials to any nation or area receiving economic or financial assistance pursuant to a determination made under section 303(a) of this Act.

Mr. AIKEN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE—ENROLLED BILLS AND JOINT RESOLUTION SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the Vice President:

H.R. 1499. An act for the relief of Gordon Langlands Johnston;

H.R. 1520. An act for the relief of Eva Gurman;

H.R. 1778. An act to amend section 17(b) of the Reclamation Project Act of 1939;

H.R. 2090. An act for the relief of Giuseppa Ferrante (Sister Candida);

H.R. 2390. An act for the relief of the city of Madeira Beach, Fla.;

H.R. 2631. An act for the relief of the estate of Nathaniel H. Woods, deceased;

H.R. 2695. An act for the relief of the Inter-County Telephone & Telegraph Co., Fort Myers, Fla.;

H.R. 2978. An act to amend section 1870 of title 28, United States Code, to authorize the district courts to allow additional peremptory challenges in civil cases to multiple plaintiffs as well as multiple defendants;

H.R. 3111. An act for the relief of Rachel Nethery;

H.R. 3608. An act to authorize the Secretary of the Navy to acquire certain land on the island of Guam;

H.R. 4656. An act to amend section 401b of the act of July 14, 1952, to permit applications for moving costs resulting from any public works project of a military department to be filed either 1 year from the date of acquisition or 1 year following the date of vacating the property;

H.R. 5257. An act to amend section 1915 of title 28, United States Code, relating to proceedings in forma pauperis;

H.R. 5645. An act for the relief of Christopher J. Mulligan;

H.R. 5873. An act for the relief of Clara H. Hall;

H.R. 5910. An act for the relief of Zelda Glick;

H.R. 6720. An act for the relief of Andrew Choa;

H.R. 6886. An act for the relief of Liliana Caprara;

H.R. 6954. An act for the relief of Frol Martin Simonov;

H.R. 7145. An act to amend section 35 of chapter III of the act of June 19, 1934, entitled "An act to regulate the business of life insurance in the District of Columbia", as amended;

H.R. 7256. An act for the relief of Miss Remedios Villanueva;

H.R. 7474. An act granting the consent of Congress to the compact entered into by the States of West Virginia and Virginia with respect to a certain part of the boundary between such States;

H.R. 7979. An act to waive section 142, of title 28, United States Code, with respect to the U.S. District Court for the Eastern District of Oklahoma holding court at Durant, Okla.;

H.R. 8199. An act for the relief of James J. Manning; and

H.J. Res. 465. Joint resolution approving certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois.

MUTUAL SECURITY APPROPRIATIONS, 1960

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 8385) making appropriations for mutual security and related agencies for the fiscal year ending June 30, 1960, and for other purposes.

Mr. ROBERTSON. Mr. President, I call up my amendment to section 112 of H.R. 8385, an amendment as I stated on last Thursday, to preserve the constitutional right of the Congress to secure information from the executive branch of the Government on its handling of appropriated funds. I offer the amendment on behalf of myself, the Senator from Louisiana [Mr. ELLENDER] and the Senator from Minnesota [Mr. HUMPHREY].

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). The amendment of the Senator from Virginia will be stated.

The LEGISLATIVE CLERK. On page 10, between lines 17 and 18, it is proposed to insert the following:

(d) None of the funds herein appropriated shall be used to carry out any provision of chapter II, III, or IV of the Mutual Security Act of 1954, as amended, in any country, or with respect to any project or activity, after the expiration of the twenty-day period which begins on the date the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering legislation or appropriations for, or expenditures of, the International Cooperation Administration, has delivered to the office of the Director of the International Cooperation Administration a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material relating to the administration of such provision by the International Cooperation Administration in such country or with respect to such project or activity, unless and until there has been furnished to the General Accounting Office, or to such committee or subcommittee, as the case may be, (1) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested, or (2) a certification by the President that he considers the disclosure of such document, paper, communication, audit, review, finding, recommendation, report, or other material to be contrary to the public interest and has forbidden its being furnished pursuant to such request.

Mr. ROBERTSON. Mr. President, the fundamental issue involved is what has been termed by some as the "right to know"—the right of the public to have access to governmental records and the right of the legislative branch of the Government to be treated as an equal by the executive branch. It involves a more serious problem than many Members of the Senate seem to realize.

The history of the problem, of course, goes back to the Constitutional Convention of 1787, composed of Members who had known during colonial days the evils of a government dominated by the executive branch and, during the revolutionary days the ineffectiveness of a government composed solely of the legislative branch. Consequently, in providing the organic law for a new Republic, the Founding Fathers very wisely sought to have a government of checks and balances composed of three coordinate but equal branches, namely the legislative, the executive and the judicial.

The Constitution they framed, in addition to providing for the enactment of Federal laws, the administration of those laws, and the handling of litigation growing out of those laws, distributed among the three branches of the Gov-

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ernment three of government's major powers. To the legislative branch it gave the power of the purse; to the executive branch, the power of the sword—which includes, of course, all dealings with foreign countries; and to the Judicial, the power of determining the constitutional limitations within which the other two branches were to function.

Needless to say, throughout our history there have been complaints that one branch or another of the Government has attempted to get ascendancy. In the days of Chief Justice John Marshall, his contention that the Judiciary under the Constitution had the right to declare unconstitutional acts of either the President or of the Congress was severely criticized by those who believed that each sovereign State should be privileged to pass on the constitutionality of any Federal act. During the unfortunate period following the Civil War, known as the Reconstruction Days, the legislative branch, bent upon punishing a helpless South, dominated the Federal field. In recent years, however, the trend has been for the executive branch to seek ascendancy over both the other branches of the Government.

During the depresion years, President Franklin D. Roosevelt had a legislative branch not only willing, but eager, to follow his leadership in a program of social reform, but a judiciary unwilling to accept reform legislation such as NRA and the processing tax on farm products. So President Roosevelt proposed to the legislative branch what was known as a court-packing plan, and came within a narrow margin of securing its enactment. However, since the decision of the Supreme Court in the school segregation cases in 1954—which will go down in history as on a par with the decision of that court in the Dred Scott case, as an evidence of the dominance of the judiciary by the executive branch of the Government—the efforts of the executive branch of the Government to dominate have been directed primarily at the legislative branch. Frankness compels me to admit that some of those conflicts have political overtones, growing out of the fact that the executive branch of the Government is controlled by one party and the legislative branch by another party.

Fortunately, no politics are involved in the pending amendment; but there are involved the conclusions of the well-known student of government, James Burnham, who in his recent book entitled "Congress and the American Tradition," expressed the view that unless there is a reversal of the present trend, Congress eventually will lose most, or all, of its powers to the executive branch of our Government. Certainly, as I have previously indicated, the most essential power of the Congress is control of the purse; and the effectuation of that control is, of necessity, involved in the right of the Congress to know the necessary details concerning the expenditure of appropriated funds.

That issue was brought to a head on March 6, 1958, when the Attorney General, when testifying before the Senate Constitutional Rights Subcommittee, reaffirmed the extreme position he had taken in his memorandum while he was the Deputy Attorney General, when he claimed that not only the President and the heads of the executive departments, but also independent regulatory agencies, have an inherent constitutional power to withhold information from the Congress, which they may exercise in their own discretion. The Attorney General further stated that this power to withhold information can be delegated to, and exercised by, anyone and everyone in the executive branch of the Government.

Relying upon those views of the Attorney General—which, incidentally, were not supported by any reference to the Constitution or by any court decision—the Acting Director of ICA denied to the General Accounting Office access to evaluation reports prepared by the office of the Assistant to the Director for Evaluation of the ICA. These reports, each one of which generally covers the ICA program in a particular country, are prepared by teams composed of two senior officers, and are based on extensive study both in Washington and in the field.

The General Counsel of the General Accounting Office testified before the Senate subcommittee that his organization needed access to these reports in order properly to perform its audit of ICA activities, and stated that the reports constituted a part of ICA's internal control machinery which it is GAO's statutory duty to evaluate. In defending his invocation of the Executive privilege doctrine as authority to withhold the evaluation reports from the General Accounting Office, because they were supposed to contain opinions and advice of ICA employees, the Acting Director said:

> This is what it amounts to as a practical matter. There isn't a thing that GAO does not get except this one evaluation report. I am not falling back now on legal distinctions or principle here. I am saying in effect that if ICA wanted to apply the "Executive privilege," GAO would not see one thing because practically every document in our agency has an opinion or a piece of advice.

In other words, the Acting Director of ICA officially pronounced to the Congress of the United States that he had the power, if he desired to exercise it, to annually expend in foreign countries several billion dollars of taxpayers' money which Congress has appropriated, and to refuse to let Congress know anything whatever concerning the details of such expenditures.

That was so astounding a doctrine that the House of Representatives was galvanized into action on June 18 of this year, when it had under consideration a bill to continue the foreign aid program—Public Law 86-108—and wrote into that bill what has since become known as the Porter-Hardy amendment, asserting the constitutional right of the Congress to receive information requested concerning the expenditures of foreign-aid money, including, of course, the evaluation reports to which the congressional committee and the General Accounting Office had previously been denied access.

In signing that bill into law, the President said:

> I have signed this bill on the express premise that the three amendments relating to disclosure are not intended to alter and cannot alter the recognized constitutional duty and power of the Executive with respect to the disclosure of information, documents, and other materials. Indeed, any other construction of these amendments would raise grave constitutional questions under the historic separation of powers doctrine.

Incidentally, the Attorney General who advised the President on that message was the same who had advised him that he had a legal right to send troops to enforce a district court order in a school segregation case, when the power to do so had been expressly excluded from the Civil Rights Act of 1957; and he was the same Attorney General who had informed the Senate subcommittee that not only the President and the heads of all departments, but likewise all regulatory and independent agencies—including, of course, ICA—had the constitutional right to deny the Congress any information they please.

In the passage of the authorization bill, Public Law 86-108, there was not a single vote in either the House or the Senate in opposition to the assertion of what is now section 112 of the pending bill that the Congress had the constitutional right to request, and to receive from the ICA, information concerning its operations in the handling of appropriated funds.

As I indicated on Thursday, in sending my amendment to the desk, to be printed, this amendment does not deny to ICA the privilege of classifying information furnished to congressional committees or the General Accounting Office and having it treated in confidence, just as the Appropriations Committee treats in confidence classified information furnished to it by the Military Establishment. The pending amendment also takes care of objections voiced by the Administrator of ICA, by specifically providing that requests should go directly to the Administrator, in writing; and the penalty for refusal would not be the impoundment of all foreign aid money, but only the impoundment of the money involved in the issue being investigated, relating to either a particular country or a particular program. And as a concession, not to an established constitutional principle, but, rather, to an established precedent in the handling of foreign affairs, the amendment provides that the ICA Director may be relieved of furnishing the requested information upon a certificate of the President that he considers the disclosure of requested material to be contrary to the public interest.

Mr. President, in the presentation of the pending amendment, we are not attempting to solve or eliminate all the problems relating to the general field of the right-to-know by the press, by the public, and by the Congress. On the contrary, we are merely asserting one very fundamental constitutional right of the Congress—its right to know what the executive branch of the Government has

done with appropriated funds. Repudiation of the pending amendment would of necessity mean that the Congress had made a complete retreat from the position that it took last July on this subject and is willing to accept and endorse the Attorney General's doctrine of unlimited Executive privilege.

Mr. President, I am positive that the House of Representatives, which took such a firm stand on this matter only a few months ago, does not intend to retreat; and, naturally, I hope that the Senate does not intend to do so either.

Mr. President, for the benefit of the several colleagues who have just come into the Chamber, I wish to say I have started my brief explanation of the amendment. I wish to summarize what the amendment means. The Attorney General testified before the subcommittee of the Judiciary Committee that executive privilege meant all Federal reguatory agencies could, of their own initiative, on their own responsibility, determine what information, if any, they would furnish to the Congress, and that the Congress could not go beyond that decision.

The ICA Director refused to give to the General Accounting Office an evaluation report on how certain funds had been handled in Laos. The Congress sent a commission there and learned that there had been a very gross mishandling situation in that country. That fact galvanized the House into action, and it provided in the bill that the administrator had to furnish all the pertinent information requested, and, on failure to do so, no more funds would be available after the expiration of 20 days.

My amendment is a little different. It provides, in the first place, that the request must be in writing. It must go, not to some subordinate official, but to the Director himself. The penalty would be not to stop all the foreign aid programs, but only that in the country or in the project under investigation.

In addition, and I wish to emphasize this, the amendment does not yield one iota of the constitutional right of Congress to demand information concerning the handling of funds it has appropriated, but it makes this much of a concession to the difference of opinion between Congress and the President.

Mr. SALTONSTALL. Mr. President, will the Senator yield?

Mr. ROBERTSON. As soon as I complete this thought. That difference is this: If the President, in keeping with the well-established principle under the Constitution of the right of the President to handle foreign policy, decides that the disclosure of some phase of foreign policy would be against the public interest, he can so certify, and Congress will not be able to get the information. But, Mr. President, it is inconceivable that any President would invoke that privilege to cover up inefficiency of some minor official in some country in the expenditure of the taxpayers' money.

I say we are not trying to settle the constitutional issue. At some future time we may have to do it, but we are not trying to do it in this bill. We are trying to arrive at a working formula which will enable Congress to have proper information about a program which costs almost $4 billion a year of the taxpayers' money.

Now I yield to the Senator from Massachusetts.

Mr. SALTONSTALL. Mr. President, the Senator from Virginia brought this question up in committee. As I understand the situation, it is that the Senate Appropriations Committee eliminated section 113 on page 9 of the bill. That was the section which it was felt might be unconstitutional. It substituted therefor section 112 (a) and (b), which was the section recommended by the majority leader, as I read the sections. Subsection (a) orders the Executive to transmit to the Committee on Appropriations of the Senate and the House a full and complete revision of the data in justification of appropriations to carry out the program by funds recomemended by the Congress; and, by subsection (b), provides that within 30 days the Executive shall report to the committees any change in the program involving $1 billion or more.

It seems to me that those two sections cover the problem of giving Congress full information on the programs in the first place, and any suggested changes in the second place.

What the Senator from Virginia proposes to do by his amendment is to provide that if any question is not answered, within 20 days, the funds for any country or any one project, of an economic nature, but not of a military nature, shall be cut off. Is that correct?

Mr. ROBERTSON. That is correct.

Mr. SALTONSTALL. The Senator's amendment provides that would be done within 20 days. It seems to me the Senator cuts off his own request when he provides that it shall be done within 20 days, because some of this data may be in a country on the other side of the world and cannot be obtained in 20 days.

I will ask the Senator if he would object to making that period 45 days instead of 20 days. That would give the Department an opportunity to get the papers from a country like Vietnam, Taiwan, or some other far-off country, study the data, put it in order, and give the requested information to the Congress.

Mr. ROBERTSON. The Senator from Virginia has in mind the situation that next year is an election year and Congress is not usually in session after the middle of July, and certainly not after the end of July. The General Accounting Office or a committee of Congress might, in the middle of the session, have an idea that something had gone wrong in the program and desired information. If the information could not be obtained in less than a month and a half, Congress might have adjourned before the information was furnished.

The ICA director, who is a very fine man, and who incidentally is from Virginia, made some suggestions to the Senator from Virginia about changes in the language which was section 113 of the bill as it was sent to the Senate. That section is now section 112, because one of the previous sections was eliminated.

I may point out that diplomatic pouches go by air. The Senator from Virginia would not object very strenuously if the request was to change the period of time to 30 days instead of 20 days, but I think 1 month and a half is too long, when a message can be gotten to any part of the world by air in 5 days, and when a cablegram can be received in a few hours. It seems to me one month would be ample time, if the Senator from Massachusetts would care to accept that suggestion.

Mr. SALTONSTALL. I have discussed this question with Mr. Murphy, the controller, whom both the Senator from Virginia and I respect very much. I mentioned 45 days. I think the minimum time required to get information from certain areas would be 35 days. Will the Senator be willing to accept a provision of 35 days instead of 30?

Mr. ROBERTSON. Would such an amendment be acceptable if the period were made 35 days rather than 20 days?

Mr. SALTONSTALL. The chairman of the Appropriations Committee is present. As I see it, we might just as well take the amendment to conference, because there already will have to be a conference on the difference in language. The majority leader's language will have to be in conference. We would have this language also before the conference.

Mr. ROBERTSON. With that assurance from my distinguished and able colleague on the Republican side, who takes such an interest in everything the Appropriations Committee does, the Senator from Virginia indicates he is willing to accept the proposed change and adopt it as his own language in the pending amendment, with the understanding that it has the approval of the chairman.

Mr. HAYDEN. Mr. President, will the Senator yield some time to me?

Mr. SALTONSTALL. I wish to make certain, Mr. President, that the clerk has the amendment.

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from Virginia [Mr. ROBERTSON] modifies his amendment by changing the provision "20 days" to "35 days."

Mr. ROBERTSON. I ask unanimous consent to make the change from "20 days" to "35 days."

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Mr. HAYDEN. Under those circumstances I would be glad to take the amendment to conference.

Mr. ROBERTSON. I wish to yield first to my colleague from Oklahoma [Mr. MONRONEY].

Mr. MONRONEY. Mr. President, I appreciate the action of the distinguished Senator from Virginia in yielding to me. I feel that in many respects he has vastly improved the language of the Hardy amendment in the appropriation bill as passed by the House, particularly in permitting the cutoff of funds to a limited degree, either of funds for the country or project to which the document requested relates. I approve of that provision.

As he knows, in the Appropriations Committee my primary concern with

the House provision was with respect to the catastrophe which would result if we turned off the valve on all foreign aid around the world. It would cost us hundreds of millions of dollars and it would destroy much of the good that the program has achieved in the past.

We would punish the innocent merely because the program might be faulty in one country or as to one project.

I approve also of the fact that he has made the Administrator of the ICA solely responsible for answering the inquiries and responsible for furnishing the information requested by the committees and by the Comptroller General.

I approve of the President having to certify personally as to that disclosure would be contrary to the national interest if the information is not to be furnished.

But my worry is that we do not go far enough. I fear that the provision may be construed as permitting the President to spread the personal umbrella of executive privilege, which goes only to the person and the Office of the President, over the entire executive branch, or as allowing him to withhold vital information, as being contrary to the national interest, relating to expenditure of appropriations, scandals, maladministration, extravagance, or waste. It would be very easy for the President to say, "We are trying to have friends in the Middle East. We are trying to have friends in the Far East. And if all of this information is revealed on the floor of Congress or before our committee, we will destroy the good will we have."

The law did not permit the President's privilege to extend to ICA. The latest legislation, which is legislation authorizing the entire mutual security program, did provide that ICA was different and specifically exempt from the laws that pertain generally to the privileges of the President in foreign policy matters and foreign intercourse.

I ask the distinguished Senator: After the Congress has received from the President his declaration that he feels it is in the national interest not to furnish the information to the Comptroller General or not to furnish it to a congressional committee, whether the Committee on Appropriations, the Committee on Foreign Relations, or the Committee on Government Operations, has the Congress any recourse if we are not satisfied that there is a legitimate reason for withholding it?

Mr. ROBERTSON. Congress has two recourses.

In the first place, my distinguished colleague will remember working late at night to report the bill. Working against time, the junior Senator from Virginia tried to uphold in toto the House provision.

Mr. MONRONEY. The Senator certainly did. He fought for it for a long period of time, and the junior Senator from Oklahoma was then questioning whether certain provisions of the Hardy amendment would shut off worldwide aid.

Mr. ROBERTSON. The issue was raised as to imposing an unconstitutional restriction on the President. The junior Senator from Virginia denied it. In any event, he did not have the votes, and so the Porter Hardy amendment was taken out. The amendment of the Senator from Texas [Mr. JOHNSON] was offered to supply information in 60 days, and that amendment was agreed to. It means the same as 30 days if it involves over $1 million. Nobody objects to that kind of provision, but it does not reach this issue.

So acting on a suggestion of colleagues who had voted against the action of the committee, he said we ought to have some safeguards. The Senator from Virginia drafted an amendment which he said specifically does not go into a solution of any constitutional issue. It is a temporary solution of a rather delicate problem and will enable us to pass a bill without conceding the extreme position taken by the Attorney General, so that neither President nor any Department or regulatory agency can deny to us anything that they please. We could not accept that. And so the Senate says, "We will demand this information about the money expended, but without conceding that a constitutional question has been solved." If the President certifies that it would be against the public interest, then we will find out what they should have told us.

Therefore we do not feel the President is going to abuse the privilege. We do not admit we have yielded any of our constitutional authority.

The Senator from Oklahoma [Mr. MONRONEY] wants to know what we can do if they still do not give us the information. We can do two things. We can refuse to appropriate, since Congress has the power of the purse, and that includes dealing with foreign countries.

Second, we will start an authorization bill next year, and if the House wants to write a clear-cut constitutional provision in it, they will have plenty of time to do it. But in the closing days of this session of Congress we did not have the time to bring that issue before the Senate, fight it out, have conferees appointed, and pass a bill which might be vetoed and we would have it all to go over again.

The Senator from Virginia [Mr. ROBERTSON] said he started to support this provision in the authorization bill. He supported it in his committee, and when he found that the whole provision was going out, in an effort to prevent the Congress from being put on record by inference that it had agreed to this extraordinary construction of this law, he saved it by this amendment.

Mr. MONRONEY. I appreciate the great effort that the Senator from Virginia [Mr. ROBERTSON] has made. I still ask what we should do when the present administration keeps information from the public by withholding it under various excuses of executive privilege and when the President merely holds his own personal umbrella of executive privilege over all the other agencies. This is but one example. We can follow it through the Department of Defense and through every department where executive privilege is claimed on the slightest pretense by the most minor executive. I wondered if the Senator would give consideration to a suggestion which has been made, and on which I have spent a considerable amount of time; namely, to go one step further than to require that the President must say that he feels it is contrary to the national interest. I am not proposing such an amendment. I am merely asking the distinguished Senator's opinion of it.

A new section would be added to read:

> In the event of a certification by the President under subsection (d), the Congress by concurrent resolution may require the delivery of the document or other material requested. If the document or other material is not furnished within 20 days after the adoption of such resolution, the limitation on the use of funds provided in subsection (d) may be applicable on the certification of the President.

After there had been opportunity for full discussion of the claim of executive privilege, and the reasons, if any, for claiming that furnishing the information would be contrary to the national interest, the two Houses of Congress, acting concurrently, could there be the judge as to whether or not they were entitled to the information on the expenditure of the funds they have appropriated. This right is now being eroded by everyone purporting to carry a badge in his pocket symbolizing the executive privilege of the President.

Mr. ROBERTSON. The Senator from Virginia can only say that he would go all out to maintain the constitutional right of the legislative branch to effectuate the power of the purse, and to know what is done with the money. But he is confronted with the practical problem which he has discussed this morning with the leadership. It is not proposed that this bill go to conference. We do not know whether there will be a quorum left in the House after today. We want this bill to pass.

The leadership has told me that if we put an amendment such as that described by the Senator from Oklahoma in the bill, the leadership on the floor, whether they liked the tenor of it or not, would probably be called upon, for practical reasons, to oppose it. The leadership has informed me that it will go along with my safeguarding amendment. Members of the committee have given me like assurance.

I have made it crystal clear in my amendment and in my discussion today that we are not conceding any constitutional right. But we have a working arrangement. We hope it will work. If it does not work, we can enact another law next year, when we shall have a full session in which to debate it and send it to Congress.

I would make the provision even tighter than has been described. I should like to write a constitutional provision, but one branch of the Government cannot effectively do that. We must have the approval of the Executive, and we must have the approval of the Judiciary. We have certain constitutional rights, but we are a coordinate body.

Suppose we were to enact a law allowing Congress to interpret the Constitu-

tion and write a provision affecting the Constitution. The President might veto it. We might pass it over his veto. What next? We would have to get it past Chief Justice Warren and his cohorts on the Supreme Court.

It is a big question. It has been at issue ever since we have had a Government. Senators know how much I admire Thomas Jefferson. He criticized John Marshall for saying that the Constitution gave the Court the right to declare an act of Congress unconstitutional. He said that was the province of the sovereign States, and that the Chief Justice was usurping power.

Nothing was done about it. Senators recall how Congress went along cheerfully with all the reform programs of President Franklin D. Roosevelt. It was called a "rubber stamp" Congress, but it did not claim that the executive was overriding it. The Supreme Court would not approve those reform measures, and opposed the plan to pack the Court, which very nearly succeeded.

This is no new issue. It is somewhat more accentuated when the President is of one party and the Congress is of another. We ought to come to grips with the problem. However, as a practical matter, I do not see how we can do it on the last 2 days of the session, and write something into law.

If the Senator from Oklahoma wishes to assume the responsibility for having adopted an amendment which might or might not pass the Senate, and might go to conference, the Senator from Virginia will not oppose him. But the Senator asked for the practical, honest-to-goodness opinion of the Senator from Virginia. He has stated that on the basis of his conferences with the leaders in the Senate, he has done the best he could to protect the constitutional rights of Congress with respect to following appropriated money.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Virginia [Mr. ROBERTSON].

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. CHURCH. I commend the distinguished Senator from Virginia for having championed a cause which seems to me to be of vital importance to the Congress and to the Nation. I want him to know that I support the amendment which he has offered, in the form he has now offered it, for two reasons.

First. I believe that this late in the session it would be impracticable even to attempt to obtain more.

Second. Because the statements the Senator from Virginia has made on the floor of the Senate today indicate that this amendment is not intended to constitute a precedent or a concession of any kind by the Senate with respect to the claim which is being made on the part of the executive as to the executive's prerogative to withhold necessary information from the Congress.

Mr. ROBERTSON. The Senator is correct.

The pending proposal is a stop-gap measure, to get us past a troublesome situation.

Mr. CHURCH. I pledge my wholehearted support for the proposal made by the Senator from Oklahoma [Mr. MONRONEY]. At the apppropriate time next year, in the authorization bill, we should go further and supply a specific remedy if the President refuses information, so that the Congress will have a way to compel its production.

Mr. MORSE obtained the floor.

Mr. HAYDEN. Mr. President——

Mr. MORSE. Mr. President, I will say to my colleagues that I intend to speak at some length on this question, because I propose to make legislative history.

Mr. HAYDEN. Mr. President——

The PRESIDING OFFICER. The Senator from Oregon has the floor. He is speaking on the pending amendment.

Mr. MORSE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names.

Aiken	Ervin	Mansfield
Allott	Fong	Martin
Anderson	Frear	Monroney
Bartlett	Fulbright	Morse
Beall	Gore	Morton
Bennett	Green	Moss
Bible	Gruening	Mundt
Bridges	Hart	Muskie
Bush	Hayden	Neuberger
Butler	Hickenlooper	Pastore
Byrd, Va.	Hill	Prouty
Byrd, W. Va.	Holland	Proxmire
Cannon	Hruska	Randolph
Capehart	Humphrey	Robertson
Carlson	Jackson	Russell
Carroll	Javits	Saltonstall
Case, N.J.	Johnson, Tex.	Schoeppel
Case, S. Dak.	Johnston, S.C.	Scott
Chavez	Jordan	Smathers
Church	Keating	Smith
Clark	Kerr	Sparkman
Cooper	Kuchel	Stennis
Cotton	Langer	Talmadge
Curtis	Lausche	Thurmond
Dirksen	Long, Hawaii	Wiley
Dodd	Long, La.	Williams, N.J.
Douglas	McCarthy	Williams, Del.
Dworshak	McClellan	Yarborough
Eastland	McGee	Young, Ohio
Ellender	McNamara	
Engle	Magnuson	

The PRESIDING OFFICER. A quorum is present. The Chair recognizes the Senator from Oregon.

Mr. MORSE. Mr. President, I believe it is very important that we——

Mr. JOHNSON of Texas. Mr. President, would the Senator from Oregon yield so that we may present some resolutions?

Mr. MORSE. I will if I may be permitted to finish the first sentence of my speech.

Mr. President, I believe it is very important that a rather detailed legislative history be made on the amendment which is pending before the Senate. In my judgment, if that legislative history is not made today, the danger is, in spite of what the Senator from Virginia says as to his intention and the intention of the coauthor of his amendment and the intention of the committee in agreeing to take the conference amendment, that a very bad precedent will be established. In order to avoid the danger of that precedent we need a little review of the constitutional history of this whole matter of executive privilege, and I intend to make such a review at some length.

I yield to the majority leader with the understanding that I do not lose my rights to the floor.

INCREASED MEMBERSHIP OF COMMITTEES ON INTERIOR AND INSULAR AFFAIRS AND PUBLIC WORKS

Mr. JOHNSON of Texas. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the resolution.

The resolution was read, as follows:

Resolved, That (a) paragraph (1) of rule XXV of the Standing Rules of the Senate (relating to standing committees) is amended—

(1) by striking out "fifteen" in subparagraph (n) (relating to the Committee on Public Works) and inserting in lieu thereof "seventeen"; and

(2) by striking out "fifteen" in subparagraph (m) (relating to the Committee on Interior and Insular Affairs) and inserting in lieu thereof "seventeen".

(b) The third sentence of paragraph (4) of rule XXV of the Standing Rules of the Senate is amended by striking out "forty-six" and inserting in lieu thereof "forty-seven".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

Mr. CASE of South Dakota. Reserving the right to object, may I ask the distinguished majority leader and the distinguished minority leader whether it is anticipated that this increase of the Public Works Committee to 17 will be permanent?

Mr. JOHNSON of Texas. For the remainder of this Congress.

Mr. CASE of South Dakota. For the remainder of this Congress?

Mr. JOHNSON of Texas. It is for the remainder of this Congress.

Mr. CASE of South Dakota. I withdraw the reservation.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 193), was agreed to.

APPOINTMENT OF SENATOR LONG OF HAWAII AS MEMBER OF COMMITTEES ON INTERIOR AND INSULAR AFFAIRS AND PUBLIC WORKS

Mr. JOHNSON of Texas. Mr. President, I send to the desk a resolution and ask that it be ordered to be considered.

The PRESIDING OFFICER. The clerk will read the resolution.

The resolution was read as follows:

Resolved, That Mr. LONG, of Hawaii, be, and he is hereby, assigned to service on the Committee on Interior and Insular Affairs and the Committee on Public Works.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 194) was agreed to.

APPOINTMENT OF SENATOR FONG AS MEMBER OF COMMITTEES ON INTERIOR AND INSULAR AFFAIRS, AND PUBLIC WORKS

Mr. DIRKSEN. Mr. President, I submit a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the resolution.

The resolution was read, as follows:

Resolved, That Mr. FONG, of Hawaii, be, and he is hereby, assigned to service on the Committee on Interior and Insular Affairs and the Committee on Public Works.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 195), was agreed to.

COMMITTEE ON UNEMPLOYMENT PROBLEMS

Mr. JOHNSON of Texas. Mr. President, I send a resolution to the desk and ask that it be considered.

The PRESIDING OFFICER. The clerk will read the resolution.

The resolution was read, as follows:

S. RES. 196

Resolved,

SECTION 1. That there is hereby created a special committee to be known as the Committee on Unemployment Problems and to consist of nine Senators to be appointed by the President of the Senate as soon as practicable after the date of adoption of this resolution.

SEC. 2. It shall be the duty of such committee to make a full and complete investigation and study of unemployment conditions in the United States, giving particular consideration to areas of critical unemployment for the purpose of determining what can be done to alleviate such conditions and to report its findings and recommendations to the Senate no later than January 31, 1960. No proposed legislation shall be referred to such committee, and such committee shall not have power to report by bill or otherwise have legislative jurisdiction.

SEC. 3. The said committee, or any duly authorized subcommittee thereof, is authorized to sit and act at such places and times during the sessions, recesses, and adjourned periods of the Senate, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable.

SEC. 4. A majority of the members of the committee or subcommittee thereof shall constitute a quorum for the transaction of business, except that a lesser number, to be fixed by the committee, shall constitute a quorum for the purpose of taking sworn testimony.

SEC. 5. The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary in the performance of its duty. The committee is authorized to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government to the extent that such services, information, facilities, and personnel, in the opinion of the heads of such departments and agencies, can be furnished without undue interference with the performance of the work and duties of such departments and agencies. The committee is authorized to procure, by contract or otherwise, the services of public or private organizations or institutions.

SEC. 6. The expense of the committee, in an amount not to exceed $100,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 196) was agreed to.

Mr. DIRKSEN. Mr. President, earlier in this session, 67 Senators, I believe, sponsored a resolution to create a Commission on Unemployment and related problems. That resolution went to the House. No action was taken there. Perhaps the amelioration of conditions in the country was an outstanding factor. I think it is generally agreed, however, that there are some pockets of unemployment in the country which might well be explored. This, therefore, is simply a Senate resolution to enable Members of the Senate to make an investigation in this field. I have no objection to the resolution.

The PRESIDING OFFICER (Mr. LONG of Hawaii in the chair). Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate reconsider the vote by which the resolution was agreed to.

Mr. DIRKSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MORSE. Mr. President, I commend the majority leader for submitting the resolution and the minority leader for supporting it, because the resolution is in line with a statement which the majority leader, to my recollection, made earlier this year when there was a conference in the District in regard to problems of unemployment. The majority leader, I recall, addressed that conference and made a very notable speech. At that time, in effect, he said that Congress would give attention to this problem, and the fact that it has not been possible to have both Houses act on it does not relieve the Senate of its responsibility. The majority leader, obviously, by this resolution recognizes our obligation and has submitted the resolution. I commend him highly for his labor statesmanship in regard to it.

Mr. JOHNSON of Texas. I thank the Senator from Oregon.

INTEREST RATES ON UNITED STATES SAVINGS BONDS—CONFERENCE REPORT

Mr. JOHNSON of Texas. Mr. President, the Senator from Virginia [Mr. BYRD] desires to submit a conference report on the E and H series savings bond bill, which passed the Senate only a few days ago. I ask that he be permitted to submit the report now, so that it may be laid before the Senate.

Mr. BYRD of Virginia. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9035) to permit the issuance of series E and H U.S. savings bonds at interest rates above the existing maximum, to permit the Secretary of the Treasury to designate certain exchanges of Government securities to be made without recognition of gain or loss, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of today.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. BYRD of Virginia. Mr. President, the conference report on H.R. 9035 permits the issuance of series E and H U.S. savings bonds at interest rates above the existing maximum, to permit the Secretary of the Treasury to designate certain exchanges of Government securities to be made without recognition of gain or loss, and for other purposes.

Mr. President, this bill, which the Senate considered only this week, is primarily concerned with raising the statutory limitation on interest rate on U.S. series E and H savings bonds. The current maximum rate on these bonds is 3.26 percent. The House bill would remove this limitation altogether.

It will be recalled that the distinguished Senator from New Mexico [Mr. ANDERSON] offered an amendment on the floor of the Senate to provide that in no event may the interest rate or the investment yield on these series E and H savings bonds exceed 4¼ percent. It will further be recalled that the Senate, after considerable debate, adopted this amendment by the vote of 45 to 41.

The conferees, recognizing the importance the Senate attaches to this amendment, insisted on this limitation of 4¼ percent. Only after extended conference discussion on this point, including conference meetings on three different days, have the conferees been able to obtain agreement on this point. The conferees on the part of the House, however, finally accepted the 4¼ percent limitation.

The 4¼ percent maximum in the case of new issues of savings bonds will apply for the period from the issue date to maturity. In the case of bonds which mature on or after June 1, 1959, and for which the Secretary provides an extension period during which the bonds may earn interest, the 4¼ percent maximum is to apply for the extension period. Similarly the 4¼ percent maximum will apply to any increased interest payments, or increases in value, provided in the case of existing bonds for periods beginning on or after June 1, 1959.

In order to obtain the consent of the confereees on the part of the House to the 4¼-percent limitation on savings bonds, it was necessary for the conferees to recede on the other point at issue in the conference.

I am referring to the provision in the House bill authorizing the Secretary of the Treasury, by regulations, to provide for the tax-free exchange of one U.S. Government obligation for another. This was requested by the administration as a portion of their advance refunding program.

The Finance Committee in considering this provision recommended to the Senate, and the Senate adopted, an amendment limiting this tax-free ex-